

Executive Summary – Enforcement Matter – Case No. 41914

AVG-Austin, LP

RN102734035

Docket No. 2011-1035-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Western Oaks Retail Center, 4625 West William Cannon Drive, Austin, Travis County

Type of Operation:

Retail development

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: November 11, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$15,400

Amount Deferred for Expedited Settlement: \$3,080

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$12,320

Total Due to General Revenue: \$0

Payment Plan: N/A

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: Yes and No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41914

AVG-Austin, LP

RN102734035

Docket No. 2011-1035-EAQ-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 16, 2011

Date(s) of NOE(s): June 9, 2011

Violation Information

1. Failed to obtain approval for a modification of an approved Water Pollution Abatement Plan ("WPAP") prior to initiating physical modifications. Specifically, the water quality pond had been realigned and the capacity changed, as well as design changes to the impervious cover [30 TEX. ADMIN. CODE § 213.4(j)(1) and (3) and WPAP No. 11-02022101, Standard Conditions No. 4].
2. Failed to provide written notification of intent to commence construction to the Regional Office no later than 48 hours prior to commencing construction [30 TEX. ADMIN. CODE § 213.5(f)(1) and WPAP No. 11-02022101, Standard Conditions No. 5].
3. Failed to submit certification by a Texas Licensed Professional Engineer that the design and function of the best management practices ("BMPs") and measures were constructed as designed [30 TEX. ADMIN. CODE § 213.5(b)(4)(D)(ii)(II) and WPAP No. 11-02022101, Standard Conditions No. 14].
4. Failed to obtain approval for an Edwards Aquifer Protection Plan for a sewage collection system prior to conducting a regulated activity. Specifically, 200 feet of a sewage collection system was constructed without approval. [30 TEX. ADMIN. CODE § 213.4(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By May 23, 2011, the Respondent submitted certification from a Texas Professional Engineer that the permanent BMPs were constructed as designed.

Technical Requirements:

The order will require the Respondent to:

- a. Within 30 days:
 - i. Submit a modification application for the WPAP, a sewage collection system plan, and associated application fees, for review and approval to;
 - ii. Update the Site's operational guidance and conduct employee training to ensure that the WPAP requirements are properly accomplished, including the timely notification of

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AVG-Austin, LP
RN102734035
Docket No. 2011-1035-EAQ-E

intent to commence construction, replacement, or rehabilitation of the project, in accordance with WPAP No. 11-02022101, Standard Conditions No. 5;

iii. Respond completely and adequately to all TCEQ requests for additional information regarding the modification and/or sewage collection system plan within 30 days of such requests, or by any other deadline specified in writing; and

b. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: JR Cao, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2543; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

TCEQ SEP Coordinator: N/A

Respondent: Peter Gilbert, Owner Representative, AVG-Austin, LP, 9565 Wilshire Boulevard, Suite 710, Beverly Hills, California 90212

Paul Linehan, Owner, AVG-Austin, LP, 9565 Wilshire Boulevard, Suite 710, Beverly Hills, California 90212

Arnold Schlesinger, Member, AVG-Austin, LP, 9565 Wilshire Boulevard, Suite 710, Beverly Hills, California 90212

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Jun-2011	Screening	21-Jun-2011	EPA Due	
	PCW	22-Jun-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	AVG-Austin, LP	
Reg. Ent. Ref. No.	RN102734035	
Facility/Site Region	11-Austin	Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.	41914	No. of Violations	1	
Docket No.	2011-1035-EAQ-E	Order Type	1660	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	JR Cao	
		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$135
Approx. Cost of Compliance \$4,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$6,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,200
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,800
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Screening Date 21-Jun-2011

Docket No. 2011-1035-EAQ-E

PCW

Respondent AVG-Austin, LP

Policy Revision 2 (September 2002)

Case ID No. 41914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102734035

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 21-Jun-2011

Docket No. 2011-1035-EAQ-E

PCW

Respondent AVG-Austin, LP

Policy Revision 2 (September 2002)

Case ID No. 41914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102734035

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 213.4(a)(1)

Violation Description

Failed to obtain approval for an Edwards Aquifer Protection Plan for a sewage collection system prior to conducting a regulated activity, as documented during an investigation conducted on May 16, 2011. Specifically, 200 feet of a sewage collection system was constructed without approval.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6

36 Number of violation days

mark only one
with an x

daily	
weekly	x
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$6,000

Six weekly events are recommended from the investigation date (May 16, 2011) to the screening date (June 21, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$6,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$135

Violation Final Penalty Total \$6,000

This violation Final Assessed Penalty (adjusted for limits) \$6,000

Economic Benefit Worksheet

Respondent AVG-Austin, LP
Case ID No. 41914
Reg. Ent. Reference No. RN102734035
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$4,000	16-May-2011	18-Jan-2012	0.68	\$135	n/a	\$135
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and submit a sewage collection system plan. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$135



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Jun-2011	PCW	22-Jun-2011	Screening	21-Jun-2011	EPA Due	
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RESPONDENT/FACILITY INFORMATION

Respondent	AVG-Austin, LP		
Reg. Ent. Ref. No.	RN102734035		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	41914	No. of Violations	3
Docket No.	2011-1035-EAQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	JR Cao
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$10,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0.0% Enhancement **Subtotals 2, 3, & 7** \$0

Notes No adjustment for compliance history.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$625

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$254
Approx. Cost of Compliance \$7,375

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$9,375

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.3% **Adjustment** \$25

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount \$9,400

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$9,400

DEFERRAL 20.0% Reduction **Adjustment** -\$1,880

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$7,520

Screening Date 21-Jun-2011

Docket No. 2011-1035-EAQ-E

PCW

Respondent AVG-Austin, LP

Policy Revision 2 (September 2002)

Case ID No. 41914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102734035

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 21-Jun-2011

Docket No. 2011-1035-EAQ-E

PCW

Respondent AVG-Austin, LP

Policy Revision 2 (September 2002)

Case ID No. 41914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102734035

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(j)(1) and (3) and Water Pollution Abatement Plan ("WPAP") No. 11-02022101, Standard Conditions No. 4

Violation Description Failed to obtain approval for a modification of an approved WPAP prior to initiating physical modifications, as documented during an investigation conducted on May 16, 2011. Specifically, the water quality pond had been realigned and the capacity changed, as well as design changes to the impervious cover.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

36 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the investigation date (May 16, 2011) to the screening date (June 21, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$220

Violation Final Penalty Total \$5,013

This violation Final Assessed Penalty (adjusted for limits) \$5,013

Economic Benefit Worksheet

Respondent AVG-Austin, LP
Case ID No. 41914
Reg. Ent. Reference No. RN102734035
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$6,500	16-May-2011	18-Jan-2012	0.68	\$220	n/a	\$220
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and submit a modified WPAP. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,500

TOTAL

\$220

Screening Date 21-Jun-2011

Docket No. 2011-1035-EAQ-E

PCW

Respondent AVG-Austin, LP

Policy Revision 2 (September 2002)

Case ID No. 41914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102734035

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 213.5(F)(1), and WPAP No. 11-02022101, Standard Conditions No. 5

Violation Description

Failed to provide written notification of intent to commence construction to the Regional Office no later than 48 hours prior to commencing construction.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	X		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$33

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent AVG-Austin, LP
Case ID No. 41914
Reg. Ent. Reference No. RN102734035
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	16-May-2011	18-Jan-2012	0.68	\$8	n/a	\$8
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct employee training to ensure that notifications are submitted when required. Date required is the date of the investigation. Final date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	14-May-2011	16-May-2011	0.00	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to prepare written notification of intent to commence construction. Date required is 48 hours prior to the investigation date. Final date is the date of the investigation.

Approx. Cost of Compliance

\$275

TOTAL

\$33

Screening Date 21-Jun-2011

Docket No. 2011-1035-EAQ-E

PCW

Respondent AVG-Austin, LP

Policy Revision 2 (September 2002)

Case ID No. 41914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102734035

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 213.5(b)(4)(D)(ii)(II) and WPAP No. 11-02022101, Standard Conditions No. 14

Violation Description

Failed to submit certification by a Texas Licensed Professional Engineer that the design and function of the best management practices ("BMPs") and measures were constructed as designed.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$625

	Before NOV		NOV to EDPRP/Settlement Offer
	Extraordinary	Ordinary	
		x	
N/A			(mark with x)

Notes The Respondent came into compliance on May 23, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,880

This violation Final Assessed Penalty (adjusted for limits) \$1,880

Economic Benefit Worksheet

Respondent AVG-Austin, LP
Case ID No. 41914
Reg. Ent. Reference No. RN102734035
Media Water Quality
Violation No. 3

Percent Interest 5.0
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$300	16-May-2011	23-May-2011	0.02	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain and submit the certification letter. Date required is the date of the investigation.
Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN602730913 AVG-Austin, LP Classification: AVERAGE Rating: 3.01

Regulated Entity: RN102734035 WESTERN OAKS RETAIL CENTER Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): EDWARDS AQUIFER REGISTRATION 11-02022101
EDWARDS AQUIFER REGISTRATION 11-02022101C
EDWARDS AQUIFER REGISTRATION 11-02022101A
EDWARDS AQUIFER REGISTRATION 11-02022101B

Location: 4625 WEST WILLIAM CANNON DRIVE, AUSTIN, TRAVIS COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: June 21, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 21, 2006 to June 21, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: JR Cao Phone: (512) 239-2543

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 6/09/2011 (921249)
 - E. Written notices of violations (NOV): (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas: N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AVG-AUSTIN, LP
RN102734035**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-1035-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding AVG-Austin, LP ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a retail development located at 4625 West William Cannon Drive in Austin, Travis County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE ch. 26001(5).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 14, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fifteen Thousand Four Hundred Dollars (\$15,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twelve Thousand Three Hundred Twenty Dollars (\$12,320) of the administrative penalty and Three Thousand Eighty

- Dollars (\$3,080) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that by May 23, 2011, the Respondent submitted certification from a Texas Professional Engineer that the permanent best management practices ("BMPs") were constructed as designed.
 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to obtain approval for a modification of an approved Water Pollution Abatement Plan ("WPAP") prior to initiating physical modifications, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(1) and (3) and WPAP No. 11-02022101, Standard Conditions No. 4, as documented during an investigation conducted on May 16, 2011. Specifically, the water quality pond had been realigned and the capacity changed, as well as design changes to the impervious cover.
2. Failed to provide written notification of intent to commence construction to the Regional Office no later than 48 hours prior to commencing construction, in violation of 30 TEX. ADMIN. CODE § 213.5(f)(1) and WPAP No. 11-02022101, Standard Conditions No. 5, as documented during an investigation conducted on May 16, 2011.
3. Failed to submit certification by a Texas Licensed Professional Engineer that the design and function of the BMPs and measures were constructed as designed, in violation of 30 TEX. ADMIN. CODE § 213.5(b)(4)(D)(ii)(II) and WPAP No. 11-02022101, Standard Conditions No. 14, as documented during an investigation conducted on May 16, 2011.

4. Failed to obtain approval for an Edwards Aquifer Protection Plan for a sewage collection system prior to conducting a regulated activity, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on May 16, 2011. Specifically, 200 feet of a sewage collection system was constructed without approval.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: AVG-Austin, LP, Docket No. 2011-1035-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order:
 - i. Submit a modification application for the WPAP, a sewage collection system plan, and associated application fees, for review and approval to:

Edwards Aquifer Protection Program
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

- ii. Update the Site's operational guidance and conduct employee training to ensure that the WPAP requirements are properly accomplished, including the timely notification of intent to commence construction, replacement, or rehabilitation of the project, in accordance with WPAP No. 11-02022101, Standard Conditions No. 5.

- b. Respond completely and adequately to all TCEQ requests for additional information regarding the modification and/or sewage collection system plan within 30 days of such requests, or by any other deadline specified in writing; and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

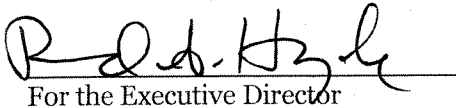
- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

12/2/11
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

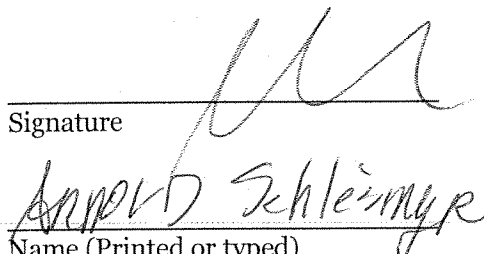
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

9-23-11
Date


Name (Printed or typed)
Authorized Representative of
AVG-Austin, LP

Member
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.